

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN H. SCHNEIDER and STEVEN AUSNIT

Appeal 2006-0546
Application 10/066,921
Technology Center 3700

Decided: August 24, 2006

Before GARRIS, FRANKLIN, and LINCK, *Administrative Patent Judges*.
GARRIS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 1-30.

We AFFIRM.

Independent claim 1 is representative of the subject matter on appeal and is set forth below:

1. A horizontal form-fill and seal machine for packaging consumer products, said horizontal form-fill-and-seal machine comprising:

means for providing a continuous length of packaging film having two longitudinal edges;

means for placing said consumer products to be packaged at intervals along a first longitudinal half of said continuous length of packaging film;

means for feeding a continuous supply of zippers between a center of said continuous length of packaging film and said consumer products;

means for folding said continuous length of packaging film down the center thereof whereby a second longitudinal half of said continuous length of packaging film is placed over upon said first longitudinal half of said continuous length of packaging film, said consumer products and said continuous supply of zippers;

means for sealing said continuous supply of zippers to said folded continuous length of packaging film;

means for sealing said longitudinal edges of said folded continuous length of packaging film to one another opposite to said film fold and opposite to said continuous supply of zippers; and

means for sealing said folded continuous length of packaging film crosswise at intervals between said consumer products to create individual packages;

wherein said means for folding, said means for sealing said continuous supply of zippers, and said means for sealing said longitudinal edges are downstream from said means for placing.

The Examiner relies upon the following references as evidence of unpatentability:

Ausnit	US 4,876,842	Oct. 31, 1989
Malin	US 6,185,907 B1	Feb. 13, 2001
Belmont	US 6,427,421 B1	Aug. 6, 2002

All of the appealed claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Ausnit or Belmont.

In the Appellants' Brief, only the features of independent claim 1 have been argued with specificity. None of the other claims have been separately argued in accordance with 37 C.F.R. § 41.37(c)(1)(vii)(September 13, 2004). As a consequence, in our disposition of this appeal, we will focus on representative independent claim 1 with which the other claims will stand or fall. *See In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991).

We refer to the Brief and to the Answer for a complete discussion of the opposing viewpoints expressed by the Appellants and by the Examiner concerning the above noted rejection.

OPINION

Having carefully considered each of Appellants' arguments set forth in the Brief, Appellants have not persuaded us of reversible error on the part of the Examiner. For the reasons set forth in the Answer and below, we will sustain this rejection.

The Appellants and the Examiner agree that Malin discloses a Horizontal-Form-Fill-and-Seal (HFFS) packing apparatus (Spec. 1; Answer para. bridging 2-3). The Appellants and the Examiner also agree that Malin differs from the invention described in claim 1 in that it does not disclose the claim limitation "means for feeding a continuous supply of zippers between a center of [the] length of packaging film and [the] consumer products" (Br. 6; Answer 3). The Examiner relies on the teachings of either Ausnit or Belmont to meet this limitation.

According to the Examiner, “Ausnit shows a package forming apparatus which comprises a means for providing a continuous film 14 in a horizontal plane, means for placing a product on the film (15), means for longitudinally folding the film (38), means for feeding a continuous zipper adjacent the longitudinal fold of the film (24), means for sealing the zipper to the film (42), means for sealing the longitudinal edges of the folded film (40) and means for sealing and cutting the packages crosswise (12)” (Answer 3).

The Examiner also indicates that “Belmont shows a package forming apparatus which comprises a means for providing a continuous film 14 in a vertical plane, means for longitudinally folding the film along its center (column 4, line 26), means for longitudinal feeding a continuous zipper to the film (14). The patent teaches alternative embodiments wherein the continuous zipper is fed either to the longitudinal edge of the film (Figures 3a and 3b) or adjacent the central fold of the film (Figure 3c)” (*id.*).

The Examiner concludes that “[i]n both the Ausnit and Belmont operations the feeding of the zipper inside the longitudinal fold provides protection from contamination to the zipper in the finished package. It would have been obvious to one of ordinary skill[] in the art to position the zipper of Malin adjacent the fold of the film as taught by either Ausnit or Belmont to provide protection to the zipper” (*id.*).

Appellants’ arguments unpersuasively focus on the individual differences between the limitations of claim 1 and each of the applied references. It is apparent, however, from the Examiner’s line of reasoning in the Answer, that the

basis for the obviousness rejection is the combination of Malin with either Ausnit or Belmont.

“[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 882 (CCPA 1981). In this regard, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *Id.*

In this appeal, the Appellants have not contested with any reasonable specificity the Examiner’s obviousness conclusion based on the combined teachings of the applied references. Accordingly, we sustain the Examiner’s rejection of claims 1-30 under 35 U.S.C. § 103(a) as being unpatentable over Malin in view of Ausnit or Belmont.

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The decision of the Examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

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